



COMPOUNDING OF OFFENCES UNDER CRIMINAL PROCEDURE CODE, 1973 – AN ANALYSIS

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Abstract:

Injustice anywhere is a threat to justice everywhere. The reason of inclusion of compounding of offences under Criminal Justice System is based upon the notion of minimizing litigation and promoting mediation among litigants. In this paper, the specific provisions of Code of Criminal procedure relating with compounding of offences have been discussed. The basic notion of compounding of offences has been defined. The kinds of pressures regarding compounding of offences, the judiciary has been facing and its response to them, have been analysed. The manner of composition and its effect has been summarized.

Key words: Compoundability, Offender, Manner of Composition, Conviction, Acquittal.

The main objective of criminal law is to protect the society against criminals and law abiding persons. The State has the duty to protect the rights of people and punish the criminals. For punishing criminals the State brought an action the criminal which is connoted as offender under the Criminal Justice System. Trial against an offender starts with the commencement of taking the cognizance of an offence by the magistrate. In certain cases the case is disposed of by compromise between the parties to the case i.e., offender as accused and the injured person as victim. These cases in terms of disposal come under the purview of compoundable cases.

The offences which directly affect the society or security of State are not permitted to be compounding. Also the crimes of grave nature must not be allowed to be the subject matter of compoundability. The paradox arises when the interest of victims of crime and interest of society in the conviction of offender clashes due to difference of opinion. Moreover, the court is over burdened and flooded with cases. Therefore, to reduce the backlog of cases more and more offences should be identified for compoundability.¹

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¹ GOVERNMENT OF INDIA LAW COMMISSION OF INDIA Report No. 237 Compounding of (IPC) Offences, December, 2011



In criminal law compounding means forbearance from the prosecution as a result of compromise between the parties. The Calcutta High Court² observed that “compounding of an offence signifies that the person against whom the offence has been committed has received some gratification not necessarily of a pecuniary character, to act as an inducement for his desiring to abstain from prosecution”. In compounding of an offence victims may receive compensation from the offender and condone the offensive conduct of accused. In this situation the code of criminal procedure provides a remedy to terminate the proceeding in respect of such type of offences. If the offence is compoundable the composition shall have the effect of acquittal.

We know that crime is a public wrong which affects the society as a whole. For maintaining law and regulation State takes an action against the person who commits the wrong. Under certain circumstances it may be advisable to allow the compounding of offences and to drop the criminal proceeding if there is a settlement between the accused person and the victim of Crime.³ Compounding is a settlement of differences between the accused person and injured party. There are certain offences which are not serious in nature for which the Code of Criminal Procedure consider that it is expedient to be decided by settlement between the parties.

There are two classes of compoundable cases one is compoundable without the permission of the court in which the code of criminal procedure empowers the accused and the person injured to compound independently and Second is compoundable only with the permission of the court in which cases parties cannot compound the case without the permission of the court.

Crime is a wrong against the society and the State. Section 2(n) of the Code of Criminal Procedure defines Offence to be an act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act 1871.⁴

The Code of Criminal Procedure under Section 320 talks about compounding of an offence. Section 320(1) of the Code shows the table of offences for which without the consent of Court

² **Murray Case** (1893) 21 Cal. 103 at 112

³ **R V Kelkar**, Criminal Procedure 3rd edition Reprint 1997 Eastern Book Company ,Lucknow ,at pp. 315

⁴ Section 2(n) The Code Of Criminal Procedure 1973



offences are compoundable. Section 320(2) of the code shows the table of offences which are compoundable with the permission of court. Once the law declares an offence to be non-compoundable it cannot be compounded even with the consent of the parties and permission of the court.⁵ An offence which law declares to be non compoundable even with the permission of the court cannot be compounded at all.⁶ The Supreme Court has allowed compounding of a non compoundable offence having regard to the fact of the case the parties being close relatives and had been living amicably since then the occurrence took place in 1979.⁷

In another case the Apex Court allowed the parties to compound the offence even the offence is non compoundable depending on the facts and circumstances of the case.⁸ Compounding of an offence is permissible only if the offence is covered particularly under the purview of Section 320 of the Code of Criminal Procedure and the court is guided solitary and squarely by the compromise between the parties.

In the case of **Ishwar Singh V State of Madhya Pradesh**⁹ the court said “In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind”.

In the case of **Rajendra Harakchand Bhandari and Others v State of Maharashtra**¹⁰ the court held that offence under Section 307 is not compoundable even when the parties had settled the matter compounding of the offence was out of question. Said settlement along with other extenuating circumstances was only taken as the ground for reduction of the sentence.

⁵ **Ajay Verma v State of Bihar** 2006 Cr L J 3520

⁶ **Ram Lal and Anr v State of J&K** (1999) 2 SCC 13

⁷ **Jalaluddin v State of UP** (2002) 9 SCC 561

⁸ **Unnikrishnan @ Unnikuttan V State of Kerala** Special Leave Petition To Appeal (Crl.) No. 18630/2016

⁹ (2008) 15 SCC 667

¹⁰ (2011) 13 SCC 311



Under Section 320(1) there are 39 offences of Indian Penal Code compoundable by the parties of the dispute by the mutual consent. Only Indian Penal Code Offences may be compoundable while other offences covered under other special law are non compoundable. Offences covered under this section such as voluntarily causing hurt¹¹ voluntarily causing hurt on grave and sudden provocation¹² wrongfully restraining or confining any person¹³ Assault¹⁴ Theft¹⁵ Dishonest misappropriation of property¹⁶ Criminal breach of Trust¹⁷ Cheating¹⁸ House Trespass¹⁹ Adultery²⁰ Criminal Intimidation²¹ etc. The Offences covered under Section 320(1) is compoundable by the person against whom offence is committed. In Section 320(2) there are 13 offences of Indian Penal Code may be Compoundable with the permission of the Court where the offence is pending for prosecution. It contains offences such as causing miscarriage²² voluntarily causing grievous hurt²³ committing breach of trust²⁴ etc.

The offence is compoundable by the person to whom offence is committed or the complainant. If the person is minor or an idiot or a lunatic any person competent to contract on his behalf may with the permission of the court compound the offences.²⁵ If the person is competent to compound an offence is dead his legal representative of the person with the consent of the court compound the offence.²⁶

Manner of Composition is not prescribed by the code but the parties should give the information to the court regarding withdrawal of the case. The composition of an offence under this section shall have the effect of an acquittal of the accused against whom the offence has been

¹¹ Section 323 of Indian Penal Code 1860

¹² Section 335 of Indian Penal Code 1860

¹³ Section 341,342 of Indian Penal Code 1860

¹⁴ Section 312 of Indian Penal Code 1860

¹⁵ Section 379 of Indian Penal Code 1860

¹⁶ Section 403 of Indian Penal Code 1860

¹⁷ Section 407 of Indian Penal Code 1860

¹⁸ Section 417 of Indian Penal Code 1860

¹⁹ Section 448 of Indian Penal Code 1860

²⁰ Section 497 of Indian Penal Code 1860

²¹ Section 506 of Indian Penal Code 1860

²² Section 312 of Indian Penal Code 1860

²³ Section 325 of Indian Penal Code 1860

²⁴ Section 406 of Indian Penal Code 1860

²⁵ Section 320(4) (a) of The Code of Criminal Procedure ,1973

²⁶ Section 320(4) (b) of The Code of Criminal Procedure ,1973



compounded.²⁷ The broad principle regarding procedure for compounding of offences is that the person who is injured by an offence may abstain from continuing with the prosecution by receiving some gratification by the accused.²⁸

In the court said if any person other than the one specified in column 3 compound the offence it will not have the effect of acquittal of the accused.²⁹ Compounding of offence is permissible at any time before the sentence is pronounced by the court but no composition would be allowed without the permission of the court.³⁰ If the accused is convicted and appeal is pending before the court no composition for the offence shall be allowed without the permission of the court to which appeal is to be heard.³¹ At the stage of revision the Court of Session or High Court may allow any person to compound any offence.³² After conviction a compromise before the appellate court cannot be allowed without the permission of appellate court even though the offence for which the accused has been convicted was compoundable.³³

No court has power to compound the offence which has not been mentioned under section 320 of the Cr.P.C. Only Supreme Court can give the permission to compound the offence not mention under Section 320. The Apex Court has directed to trial court to compound the offence of attempt to murder under Section 307 of IPC.³⁴ Only the Supreme Court has power to direct compounding of non- compoundable offence whereas high Court has no such powers.³⁵ The Supreme Court observed that a non compoundable offence can be quashed on the ground of a settlement agreement between the offender and victim if the circumstances so warrant.³⁶

The Apex Court followed the above observation while dealing with a situation where the accused was charged for offence punishable under Section 307 of the IPC, which is a non-

²⁷ Section 320(8) of The Code of Criminal Procedure ,1973

²⁸ Durga Das Basu Cr.P.C. 1973 4th 2010 Vol. 2 pp.1552

²⁹ **State of Mysore v Nanapur** AIR 1960 Mys.325

³⁰ Section 320(5) of The Code of Criminal Procedure ,1973

³¹ Section 320(5) of The Code of Criminal Procedure ,1973

³² Section 320(6) of The Code of Criminal Procedure ,1973

³³ Batuk Lal, Commentry of The Code of Criminal Procedure 1973, 2nd edition (1999) Orient Publishing Company Allahabad at pp. 1155.

³⁴ **Mahesh Chand v State of Rajasthan** (1989) CrLJ 121

³⁵ **Mohan Singh v State** 1993 CrLJ 3193(Raj)

³⁶ **Gian Singh v State of Punjab and Other's** (2012) 10 SCC 303



compoundable offence. The parties arrived at a compromise at the stage of recording of evidence. In those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

The Apex Court³⁷, opined that :

“It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 Cr.P.C. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C.”

Conclusion:

Section 320 of the Code of Criminal Procedure enlists certain types of offences which are compoundable by the parties without the permission of court and some types of offences which are compoundable with the permission of court. Other offences which are not enlisted under Section 320 of the Code of Criminal Procedure are not compoundable. The court has no power to compound such offences which are not enlisted. Compounding can be done by the victims or his /her legal representative. In cases where the accused is habitual offender compounding of offence is not permissible. In compounding an offence the accused pay some damages to the victims or injured. The

³⁷ **Shiji alias Pappu and others vs. Radhika and another** (2011) 10 SCC 705, AIR 2012 SC 499



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acquittal of accused does not necessarily prevent the occurring of offence. If the court thinks fit the compounding of offences is the best way to resolve the case.
